**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision : January 12, 2007

**WP(C) No. 9952/2006**

# Avijit Bhushan ……. PETITIONER
! Through: Mr.Anil Kumar Sangal, Advocate

Versus

$ University of Delhi ..... RESPONDENT
^ Through : Mr.Mohinder J.S. Rupal and Ms.Rashmi Rai, Advocates.

***CORAM :-***
*** HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment? YES
2. To be referred to the reporter or not ? YES
3. Whether the judgment should be reported in the Digest? YES

**ANIL KUMAR, J.**
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1. The petitioner has prayed for a direction to the respondent to promote/admit the petitioner to third term LL.B Programme and permit him to clear second term LLB Programme as per the University rules applicable to those students who failed to clear the second term examination in first attempt and such other directions as may be deemed appropriate in the facts and circumstances.

2. The facts to comprehend the disputes are that the petitioner appeared in LL.B Entrance Test 2005 for admission to three-year LLB Degree Course in the University

of Delhi and was admitted at Campus Law Centre, Chhatra Marg, North Campus and was allotted Roll No.252.

3. The LL.B. Degree Course offered by University of Delhi is of three years and each year has two terms and, therefore, the entire course comprises of six terms and in each term there are five papers. According to the petitioner, the pass percentage for each paper is 45%. For the LLB Degree course, the attendance rules contemplate that the candidates are required to attend 66% of the lectures in each subject including moot court and practical training. The relevant rules for attendance and for promotion of a candidates in LLB Program are as under:-

> ATTENDANCE RULES:-
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> 1. Students pursuing LL.B programme are required to attend 66% of the lectures in each subject including moot courts and practical training.
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> 2. In exceptional cases for reasons to be recorded and communicated to the Bar Council of India, Dean Faculty of Law/ Professor-in-Charge of the Law Centre may condone attendance short of those required by this rule, if the student had attended 66% of the lectures in the aggregate per semester examinations.
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> 3. The Professor-in-Charge shall have the power to detain and strike off name of a student in case of gross irregularity in attendance.
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> "PROMOTION RULES
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> A student of the First Term LL.B Programme will be promoted to the Second Term, irrespective of the number of courses in which he/she has failed to pass or failed to appear in the First Term examinations: Provided that he or she has not been detained on account of shortage of attendance in First Terms Examinations. A student will

> be promoted to Third Term LL.B. Programme only in those cases where he/she has passed at least five courses offered by him/her at the LL.B. first and Second Term Examinations taken together.
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> Note: There shall be no readmission in the First year LL.B Programme."

4. The petitioner contended that he had cleared all the five papers and passed the first term of LLB Degree course and a mark sheet dated 22nd March, 2006 was issued to him. The petitioner was not detained in first semester on account of attendance. After the first term, the candidate attended the classes of the second term but he was not allowed to take examination because his attendance in the second semester in each of the subjects was not 66% as is contemplated under the attendance rules. According to the petitioner, he was told that his aggregate attendance was only 47%. According to the promotion rules, since the petitioner had qualified five subjects out of 10 subjects of first term and second term, he had become eligible for promotion to third semester, however, the petitioner was not admitted to third semester. The petitioner had made a representation for his promotion to third term on which an endorsement was made by the Professor-in-Charge of Campus Law Centre which is as under:-

> "The Attendance and Promotion Rules as stated in the Bulletin of Information (2005-2006) at page 16 specifically states that the PIC has the power to detain and strike off name of a student in case of gross irregularity. The note of the Promotion Rule specifically states that there shall be (no) re-admission in 1st Year LL.B programme. **Although you have passed 5 papers of 1st Terms, yet you have been detained in 2nd Term of 1st Year. Accordingly, you are not eligible to be promoted as your name stands struck off the rolls."**

5. Aggrieved by the decision of the Professor-in-Charge holding that the petitioner is not permitted to be promoted and striking off the name of the petitioner

from the rolls, the present writ petition has been filed contending that the petitioner is not questioning his detention from appearing in the second term examination due to shortage of attendance but striking off his name from the rolls and denial of the promotion to third term is being challenged. The petitioner contended that neither any show cause notice nor reasonable opportunity was given to the petitioner before striking off his name from the rolls. Emphasis was laid by the petitioner on the ground that any candidate who passes at least five subjects offered by him/her at the LLB first and second term examinations taken together and who is not detained on account of shortage of attendance in First Term, is eligible for admission to third term LL.B Program and, in the circumstances, the admission to third term could not be denied to the petitioner. According to the petitioner, his case cannot be worse than a candidate who appears in five subjects and fails in all the five subjects in the second term and as far as the shortage of attendance is concerned, it was contended that the petitioner can be allowed to attend the second term again so as to complete the shortage of attendance as he has not been granted admission to the third semester during the year 2006-2007 and third term is almost over and therefore, he should be allowed to join the third term during the year 2007-2008 and allowed to complete his attendance for the second semester by attending classes from January, 2007 onwards till the completion of second semester.

6. The writ petition is contested by the respondents and an affidavit of Shir A.K. Dubey, Registrar, University of Delhi has been filed. It was contended that the shortage of attendance can be condoned if the student had attended 66% of the

lectures in aggregate for the semester examinations whereas the attendance of the petitioner is only 47%. Relying on the power of Professor-in-Charge, it was stated that he has the power to detain a student in the same class in which a student had been studying and even not to send him for the University examination. Consequently, it was stated that the Professor-in-Charge of the Law Centre had the power to strike off the name of the petitioner who is grossly irregular in attendance inspite of warning or when the absence of the student is for such a long period that he cannot put in requisite percentage of attendance. Reliance was placed on S.N. Singh Vs. Union of India & Others, 106 (2003) DLT 329, where it was held by a Division Bench that the Bar Council of India rule requires 66% attendance in each paper and empowers relaxations in particular paper provided, however, total attendance in all subjects is 66% in that semester. Reliance was also placed on the fact that the Bar Council of India recognizes the LL.B Degree Course of the University of Delhi, provided that its rules are in conformity with the rules of the Bar Council of India. Pursuant to the decision in the said case, the rules of University of Delhi had been amended, in order to make them in conformity with the Bar Council of India Rules. Consequent thereto a candidate must have 66% attendance in each subject before entitling himself to appear in the examination.

7. The respondent contended that the Professor-in-Charge has the power to detain and strike off the name in cases of gross irregularities in attendance. The promotion rules specifically states that there shall be no re-admission in LLB Degree program in the first year. For declining re-admission in LLB first year program, it was contended

that the intake of seats in LLB program was regulated and restricted by the Bar Council of India and if re-admission is allowed in LLB first year then intake in first year would increase thereby violating the regulation of Bar Council of India.

8. The contentions raised by the respondent were refuted by the petitioner in the rejoinder dated 20th July, 2006. The petitioner contended that he is not seeking re-admission in LLB first year Program and, the only question for determination is whether the professor-in-charge could have struck off his name from the rolls on account of shortage of attendance despite the fact that the petitioner has cleared five papers in the I and II semester and was not detained in first semester on account of shortage of attendance and has become eligible for promotion to third semester as per the promotion rules. Since the professor in charge has power to detain a student on account of shortage of attendance, the petitioner could be and has been detained in second semester but since he fulfills the criteria for promotion to third semester, his name could not be struck off without giving a reasonable opportunity as his case is not of gross irregularity in attendance.

9. I have heard the counsel for the parties and have perused the petition, counter affidavit, rejoinder and the documents filed by the parties. According to the promotion rules of the respondent, a candidate who has passed at least five courses offered by him/her at the LL.B first and second term examination taken together is entitled to promotion to the third semester irrespective of number of courses in which he/she has failed to pass or failed to appear provided he has not been detained on account of

shortage of attendance in first term. The petitioner has not been detained in the first semester examination on account of shortage of attendance. The rule does not stipulates that a candidate will not be entitled for promotion, in case he is detained for shortage of attendance in the second semester examination. The petitioner was detained for shortage of attendance in the second semester examination, however, that does not disentitle him for promotion to the third semester. The petitioner also qualified five courses offered by him in the first and second semester as has been contemplated under the promotion rules and therefore, it can not be alleged by the respondents that the petitioner is not entitled for promotion to the third semester.

10. The attendance rule does not stipulate that every candidate who has shortage of attendance in the second semester shall be detained and his name shall be struck off. This is also not the case of the respondent. The Professor in charge does have the power to detain and strike off the name of the student in case of gross irregularity in attendance.

11. What is a gross irregularity? If a candidate has not been detained in the first semester on account of shortage of attendance and has qualified all the five subjects and has become entitled for promotion to the third semester, will the name of such a candidate be liable to be struck off on account of his detention in the second semester for shortage of attendance. The petitioner has 47% attendance whereas the requisite percentage is 66%. The shortage of attendance of the petitioner is on account of his indisposition. Whether such shortage of attendance can be construed to be gross

irregularity so as to entail the consequence of striking off the name from the roll?

10. Under the attendance rules for the first year LL.B. programme, the Professor-in-Charge is empowered to detain or strike off name of a student only in cases of "gross irregularity" in attendance and not otherwise. The rule stipulates "gross" irregularity and not irregularity simplicitor.

11. Meaning of "Gross" as defined in the Chambers Twentieth Century Dictionary (Revised Ed. 1976, Reprinted in 1977, 1978, 1979, Allied Publishers Pvt. Ltd. Pg 574):-

> "Gross means coarse: rough: dense: palpable: flagrant: glaring: extreme: shameful: whole: coarse in mind: stupid: sensual: obscene: total, including everything."

According to Black's Law Dictionary: (5th edition, 4th reprint, 1981, pg 632)

> Gross means: out of all measure, beyond allowance: flagrant: shameful as a gross dereliction of duty, gross injustice, gross carelessness or negligence.

According to The Oxford American Desk Dictionary (special millennium edition, 1998, Oxford University Press, pg. 257)

> "Gross means..(3) flagrant(gross negligence)…(5) repulsive; disgusting….."

According to Legal Thesaurus by William C. Burton (2nd Edition, 1992, Macmillan Publishing Company, pg 244)

> "Gross means absolute, aggravated, atrocious, big, colossal, considerable, deplorable, dire, disgusting, dreadful, easily seen, egregious, enormous, evident, extreme, fulsome, gigantic, grave, great, grievous, heinous, horrible, huge, immense, indelicate, lamentable, large, manifest, massive, monstrous, obvious, odious, offensive, outrageous, reprehensible, shameful, shocking, terrible, unmitigated, utter."

12. "Irregularity" as defined in Chambers Twentieth Century Dictionary (Revised Ed. 1976, Reprinted in 1977, 1978, 1979, Allied Publishers Pvt. Ltd. Pg 695):-

> "Irregular (Irregularity) means: not regular: not conforming to rule or to be ordinary rules."

According to Advanced Law Lexicon by P Ramanatha Aiyar(3rd Edition, 2005, Wadhwa and Company, Pg 2045):-

> "Irregularity means: A neglect of order or method: not according to the regulations: the doing of some act at an unreasonable time, or in an improper manner:
> An irregularity is defined to be the want of adherence to some prescribed rule or mode of proceeding: and it consists either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in a unreasonable time or improper manner."

13. The question which needs consideration is that the whether shortage of attendance in the second term where the petitioner had 47% aggregate attendance

against the requirement of 66% would amount to "gross irregularity" in attendance for the purpose of exercise of power by the Professor-in-Charge, under the Attendance and Promotion Rules though the petitioner is entitled to promotion to the third semester.

14. The word "irregularity" does not mean mere irregularity in attendance. "Irregularity" is qualified by the word "gross" which defines the nature of "irregularity" that will attract the power conferred on the Professor-in-Charge. Read together "gross irregularity" suggests such an irregularity which is not capable of being cured. It means flagrant abuse of any rule or order which cannot be rectified. Therefore, before exercising power the Professor in charge must be satisfied that there has been "gross irregularity" in attendance.

15. It is not disputed that the petitioner fulfilled the attendance requirement of 66% in each subject in the first term and was allowed to take the first term examination. The petitioner also cleared all the five papers in the first term examination. It also can not be disputed by the respondent's that the petitioner did not attend classes in the II term on account of his illness. Therefore shortage in attendance could be attributed to his recurring illness as has been asserted by the petitioner. In order to infer that the petitioner has committed a gross irregularity, no reasonable opportunity has been given to the petitioner and his version for shortage of attendance has not been considered. The Professor in charge has not even given a finding that the petitioner has committed a gross irregularity. What has been stated on

his application seeking admission to the third semester is that since the petitioner has been detained in second semester, he is not eligible to be promoted and his name has been struck off.

16. Whether the respondent has appreciated the relevant rule? A rule must be read literally, that is, by giving to the words used their ordinary, natural and grammatical meaning. The words used in a rule are to be first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless there is something which suggests to the contrary. If the language is plain and unambiguous the rule is to be construed in literal sense only. The rule for promotion categorically stipulate that after passing five courses in first and second semester, a candidate is entitled for promotion to the third semester provided he has not been detained on account of shortage of attendance in first semester. The rule can not be construed to mean that a candidate is liable for detention if he has been detained for shortage of attendance in the second semester.. The rule can not be read in such a manner so as to include detention of a candidate who has been detained in second semester also. A candidate who has attended the classes mechanically and who has failed in all the subjects of the second semester can not be better than a candidate who has been detained in second semester on account of shortage of attendance for some reason. Therefore the case of a candidate who has been detained in second semester on account of indisposition, a fortiori can not be termed a case of gross irregularity so as to entail the extreme consequence of striking off the name of the candidate from the rolls.

17. The promotion rules of the respondent also do not provide that a candidate has to have minimum 66% attendance in second semester to be eligible to be promoted to the third semester. Any eligibility for promotion to the third semester which is not provided in the rules can not be considered to decide whether a candidate is entitled for promotion or not. Under the Promotion Rules, for admission to II year of degree course it has been specifically provided that a student will be promoted only if he has not been detained on account of shortage of attendance in I term that is a student is required to have 66% attendance (if the same has not been condoned) in the first term for admission to II term and it does not lay down any other prerequisite for admission to II term. Therefore irrespective of the number of papers cleared a student shall be entitled to admission to the II term if he meets the attendance requirement.

18. In S.N. Singh's case (supra) the Court issued a specific directions to the respondent to amend the rules for attendance to bring them in conformity with the corresponding rules framed by the Bar Council of India as under:-

> "28. Since the Bar Council of India recognizes the LL.B. Degree Course of the University of Delhi and the Bar Council of India is a statutory body constituted under the Advocates Act 1961 and is empowered to lay down standards of legal education, University of Delhi would be required to bring its rules in conformity with the rules of the Bar Council of India.
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> 29. The respondent No. 1 is thus issued a direction to amend its examination and promotion Rules in the matter pertaining to attendance to bring them in conformity with the corresponding rules framed by the Bar Council of India."

In view of the specific directions issued by the Court in the S.N. Singh's case the respondent amended the rules pertaining to attendance, however, no amendment was made in the promotion rules. If the rules do not contemplate detention in second semester as bar to the promotion to the third semester, second year, the same can not be applied by the respondent nor on that ground the admission of a candidate can be cancelled.

19. The contentions of the respondent that there is no scheme for re-admission and that the shortage of attendance can be condoned only if the student had attended 66% of the lecture in aggregate are insignificant as a the petitioner has neither sought readmission nor is he seeking condonation of attendance. The only relief sought by the petitioner is promotion to third term on account of his passing in five papers in the I year and permission to clear second term papers as per the rules applicable to students who failed to clear second term in first attempt after attending requisite number of lectures. On the basis of plea raised by the respondent, all the students who have shortage of attendance, can not be allowed to attend the semester again and if that be so then the admission of all such students should be cancelled which is not born out from the rules of attendance and promotion. A student who is detained in first semester may not be entitled for re-admission but the same can not be said about the students who has qualified all the subjects of first semester. Perhaps for this reason, the rule for promotion contemplates that a candidate will be entitled for promotion provided he has qualified five courses of first and second semester and has not been detained in first

semester and the rule is conspicuously silent about detention of a candidate on the ground of shortage of attendance in the second semester.

20. Therefore, after considering the Attendance, Examination and Promotion Rules in detail it is clear that for promotion to III semester the only condition as provided under the rules is passing in five courses in the I year (I and II semester being taken together) which condition has been fulfilled by the petitioner and that there is nothing in the rules providing for minimum attendance requirement of 66% for promotion to III semester nor the rules contemplates that all the students who are detained in second semester on account of shortage attendance, their admission shall be cancelled.

21. The finding of the respondent about gross irregularity committed by the petitioner is also vitiated as the petitioner has not been given a reasonable opportunity and the order has been passed without proper application of mind. Consequently the order of the respondent striking off the name of the petitioner from the rolls can not be sustained and is hereby set aside. Since the petitioner is eligible to be promoted to the next semester, third semester, he is to be admitted to the third semester. Since the petitioner now can not be admitted to the third semester for the session 2006-2007, he will be entitled for admission to the third semester of session 2007-2008.

22. Since the striking off the name of the petitioner has been held to be illegal and contrary to rules, it will be just appropriate for the respondent to allow the petitioner

to attend the classes of second semester and after completing attendance in accordance with rules, allow him to appear in the examination of second semester in the session 2006-2007.

23. In the facts and circumstances of the case and for the aforesaid reason the writ petition is allowed and the order canceling the admission of the petitioner to the LL.B course on account of alleged gross irregularity is quashed and the respondent is directed to promote the petitioner to the III semester and admit him to the third semester during the session 2007-2008. In the meanwhile the respondent is directed to allow the petitioner to attend the classes of second semester and admit him to the said second semester so that the petitioner may now complete his attendance and attend 66% of the classes in the courses of second semester in accordance with the attendance rules so as to be eligible to appear in the examination of second semester. The respondent is therefore, directed to admit the petitioner to the second semester of LL.B course during the session 2006-2007 forthwith. The writ petition is disposed of in terms hereof and the parties are left to bear their own costs.

Dasti under the signatures of Court Master

January 12, 2007 **ANIL KUMAR J.**
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